

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

CONECTIV SERVICES, INC.<sup>1</sup>

Employer

and

Case 4–RC–19852

SHEET METAL WORKERS INTERNATIONAL  
ASSOCIATION, LOCAL UNION NO. 19, AFL–CIO<sup>2</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

5. The Employer is engaged in the construction and installation of heating, ventilation and air conditioning (HVAC) and plumbing systems. The Petitioner seeks to represent a unit of New Jersey construction sheet metal and plumber/pipefitter mechanics, laborers and apprentices employed in the Employer's former New Jersey Division.<sup>3</sup> Alternatively, the Petitioner seeks to represent employees in the above identified job classifications employed by the Employer on projects in the state of New Jersey.<sup>4</sup> The Employer does not contest the composition of the unit but contends that the only appropriate unit is one that encompasses the Employer's North Division. At the time of the hearing, there were approximately fifty employees in the petitioned-for unit and approximately 165 employees in the unit the Employer contends is appropriate.<sup>5</sup>

The Employer's Mechanical Division provides HVAC and plumbing services for industrial, institutional and large commercial customers in Delaware, Maryland, Pennsylvania, and New Jersey. The Mechanical Division came into existence in October 1996 when the Employer acquired an HVAC construction contractor located in Wilmington, Delaware. Between January 1998 and April 1999, the Employer acquired three other HVAC construction contractors. The Employer integrated its operations with those of the acquired contractors and in February 1998 created four geographically defined subdivisions, one of which was the New Jersey Division. In March 1999, the Employer renamed the divisions the Wilmington, Georgetown, Allentown/Reading<sup>6</sup> and Cherry Hill Divisions, the latter being the former New Jersey Division. In September 1999, the Employer eliminated the aforementioned divisions and reorganized the Mechanical Division into its current structure. The Mechanical Division consists of three subdivisions: the North Division, headquartered in Wilmington, Delaware and serving northern Delaware, the northeastern shore of Maryland, southwestern New Jersey and southeastern Pennsylvania; the South Division, headquartered in Milford, Delaware and serving southern Delaware and the eastern shore of Maryland; and the West Division, headquartered in Lancaster, Pennsylvania and serving northern Maryland and central Pennsylvania. The Employer currently maintains a Service Division office in Cherry Hill.

Before the September 1999 reorganization, Field Operations Manager Mike Perogine was generally responsible for the Mechanical Division's work at all of its job sites. Each of the geographic subdivisions had a Division Manager who reported to Perogine. The Division Managers generally oversaw the contracts in their divisions and attempted to enhance their profitability. Some of the divisions also had Project Managers who reported to the Division

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<sup>3</sup> The Petitioner contends that the unit should include the employees named in Petitioner's Exhibit 1, a list of the employees purportedly broken down by geographical description, and which includes employees in the Employer's former New Jersey Division. Additionally, the Petitioner would include subsequently hired employees in the relevant classifications who worked on projects in New Jersey.

The parties stipulated that the Employer's working foremen are not supervisors and should be included in the unit, and that the Employer's Superintendents should be excluded as supervisors. The parties also agreed to exclude sheet metal shop employees from the unit.

<sup>4</sup> The Petitioner's alternate unit would include those employees who worked on projects in New Jersey and qualify under the *Daniels* eligibility formula. See *Daniels Construction Co.*, 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967); *Steiny and Co.*, 308 NLRB 1323 (1992).

<sup>5</sup> This total includes about 30 to 35 employees who were on layoff status at the time of the hearing.

<sup>6</sup> Georgetown is located in Maryland, and Allentown/Reading is in Pennsylvania.

Managers, while in others the Division Manager also served as Project Manager. As of March 1999, there were six Superintendents who worked in the field and reported directly to Perogine rather than to their Division Managers. Perogine and the Superintendents were responsible for personnel and staffing issues. Superintendents interviewed applicants and recommended them to Perogine, who made all of the hiring decisions and was responsible for staffing specific projects. Perogine also made decisions as to discipline and discharge based on the Superintendents' recommendations. He selected employees for projects in the Cherry Hill Division from a labor pool consisting of all of the employees who worked within a 50-mile radius of the Cherry Hill office<sup>7</sup> based on their skills and the location of the project. In making staffing decisions, Perogine tried to limit the distances employees needed to travel because the Employer paid its employees' travel costs when they were required to travel at least forty miles to their assigned projects. When needed, however, Perogine assigned employees to jobs located in divisions other than their home divisions. Because the Cherry Hill Division was generally understaffed, employees from other divisions frequently worked on Cherry Hill Division projects, but employees from the Cherry Hill Division rarely worked on projects in other divisions.

Since the September 1999 reorganization, Division Managers have assumed responsibility for decisions as to hiring, discipline, discharge and staffing in their respective divisions. There are three Superintendents in the North Division who work out of the Wilmington office. Superintendents do not report to Perogine, who was reassigned to another position, but instead report directly to their Division Managers. The Superintendents can recommend the discharge, discipline, transfer, layoff, or hiring of employees and also authorize overtime and evaluate employees' work. Each Division also has working foremen who report to the Superintendents. The Employer does not terminate its employees after they complete work on projects but maintains a pool of sheet metal and plumber/pipefitter mechanics, laborers and apprentices that it assigns as needed. [Division Managers, Superintendents, and Project Managers](#)<sup>8</sup> hold bi-weekly operations meetings during which they discuss work assignments for each project. The labor pool is no longer limited to a 50-mile radius but now consists of all the employees within a division, though the Division Managers still continue to attempt to minimize travel distances. Division Managers make assignments based on the employee's geographical proximity to the job and whether they have the skills needed to perform the work. For example, if the project requires specialty welding or kitchen exhausts, the Division Manager would select employees from the pool who are capable of performing these types of work. At times, groups of employees will go together from job to job if they work together particularly well.

[As of the hearing, the Employer remained short of local employees to staff its New Jersey jobs, so employees who formerly worked in the Cherry Hill Division on jobsites in New Jersey continued to work almost exclusively in the state. Thus, since January 1, 1999, 71 of the 73 New Jersey workers in 1999 worked only on New Jersey projects. During the same period, however, employees from the other divisions frequently worked on projects in divisions](#)

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<sup>7</sup> The Cherry Hill Division performed jobs in, among other places, Valley Forge, Pennsylvania and Dover, Delaware.

<sup>8</sup> The Employer still employs Project Managers in the North Division but the record does not disclose how many. To the extent there is a Project Manager, that individual reports to the Division Manager.

other than their home divisions, including New Jersey. Specifically, 43 percent of the Employer's employees worked in more than one division, including 21 percent who worked in more than two divisions. Most significantly, 69 employees from other divisions performed work in New Jersey during this time period, and some of these employees worked on projects that were previously started by New Jersey Division employees.<sup>9</sup> According to the Employer, if staffing needs change, employees who have been based in New Jersey could be assigned to projects elsewhere in the North Division.

Both before and after the September 1999 reorganization, employees in all divisions have been paid on an hourly basis and shared the same wage scales and benefits. All divisions use the same formats for employee performance evaluations, and personnel records are maintained centrally. Hiring, work rules and disciplinary policies also are consistent throughout the company. The Employer conducts employee training and testing in Wilmington, and employees from any division can participate in any available training session. Variations in employee shift breaks and overtime schedules are on a project basis. The Employer conducts quarterly employee meetings at locations near the project sites. On at least one occasion, employees from various local projects met at the Employer's Service Division office in Cherry Hill. There is no difference in skills among the employees in the different divisions. The Employer has no history of bargaining with employees in the petitioned-for unit.

In determining an appropriate bargaining unit in the construction industry, the Board does not determine the most appropriate or comprehensive unit, but simply *an* appropriate unit. In doing so, the Board looks first to the unit sought by the petitioner, and if it is appropriate, the inquiry ends. If, however, it is inappropriate, the Board will scrutinize the employer's proposals. When the employer operates in more than one location, the following factors have been found to be particularly relevant to its inquiry: bargaining history; functional integration of operations; the similarity of skills, duties, and working conditions of employees; centralization of control of labor relations and supervision, particularly in regard to hiring, discipline, and control of day-to-day operations; and interchange of employees at construction sites. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). See also *Oklahoma Installation Co.*, 305 NLRB 812 (1991); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988).

Consideration of the above factors warrants a conclusion that the Petitioner's proposed unit of employees in the Employer's former New Jersey Division is inappropriate. Thus, the Employer no longer maintains a New Jersey Division but has subsumed the former New Jersey Division employees in its more comprehensive North Division. The Employer makes hiring, staffing, and disciplinary decisions on a division-wide, rather than a statewide basis. Although the Employer's staffing requirements and travel pay policies resulted in the New Jersey employees working almost exclusively in that state in 1999, the Employer does not base work assignments entirely on geographic considerations, and employees are sent to work outside of their home states as needed. In fact, the Employer's employees have frequently crossed state lines for work; in 1999 a significant number of employees from outside New Jersey worked on projects in that state, at times on the same projects as the New Jersey employees. Moreover, the

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<sup>9</sup> The record does not specify whether the employees performed the work in other divisions before or after the September 1999 reorganization.

Employer anticipates that New Jersey employees will be assigned elsewhere in the North Division to work on the Employer's future projects. The Employer employs sheet metal employees and plumbers/pipefitters in all of its divisions, and these employees all have the same skills, abilities or duties. The employees' essential terms and conditions of employment, including wages and benefits, are uniform throughout the company. Other matters, such as employee meetings and overtime assignments, are handled on a project by project basis. There is no bargaining history for the New Jersey Division. Considering that the employees in the former New Jersey Division do not share separate administration or supervision, that employee skills and terms and conditions of employment are uniform throughout the company, and that the Employer staffs its projects with employees from throughout its divisions, a separate unit of former New Jersey Division employees is not appropriate.<sup>10</sup>

For similar reasons, the Petitioner's alternative proposed unit, which would include all employees in the agreed-upon classifications who worked on projects in New Jersey, is inappropriate. In this regard, the Petitioner's reliance on *CCI Construction Co., Inc.* 326 NLRB 1319 (1998), is misplaced. In that case, the Board found appropriate a unit of sheet metal employees limited to the employer's three Pennsylvania job sites and excluding employees who worked on projects in other states. Unlike the instant case, however, there were no transfers or interchange between employees from different states, and the Pennsylvania employees were not included in a division with employees from other states. Moreover, the employer had no continuing nucleus of employees but ordinarily terminated its sheet metal employees at the conclusion of their projects. In contrast, the Employer in the instant case maintains a pool of employees and moves them from job to job on a divisional basis.

Accordingly, I find that neither of the units proposed by the Petitioner are appropriate. See e.g., *Oklahoma Installation Co.*, supra, *Dezcon, Inc.*, supra. See also *Acme Markets, Inc.*, 328 NLRB No. 173 (1999). Cf. *Longcrier Co.*, 277 NLRB 570, 571 (1985).<sup>11</sup> Rather, I find that the Employer's proposed unit of employees in the North Division is an appropriate unit, as it conforms to the Employer's administrative structure and the pool from which employees are selected for projects. I further note that no party has proposed a unit to include all of the Employer's employees or a project-by-project unit.

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time sheet metal mechanics, sheet metal laborers, sheet metal apprentices, plumber/pipefitter mechanics, plumber/pipefitter laborers, and plumber/pipefitter

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<sup>10</sup> Statewide units may be appropriate in some circumstances. See, e.g. *Sav-On Drugs, Inc.*, 243 NLRB 859 (1979). The Board has indicated, however, that it historically has not defined the appropriate unit in geographical terms. *P.J. Dick Contracting*, supra, at 151, fn. 3. Moreover, the record in this case provides an inadequate basis for such a unit.

<sup>11</sup> In that case, the Board found inappropriate a countywide unit of construction employees, finding that employees at each of the Employer's projects constituted an appropriate unit. The Board found it significant that job superintendents were responsible for hiring, staffing and determining terms and conditions of employment at their individual projects and employees were not transferred from job to job but were terminated at the completion of the project.

apprentices employed by the Employer in its North Division, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision and it is not clear from the record whether the Petitioner is willing to proceed to an election in the unit found appropriate herein. Accordingly, if the Petitioner is willing to proceed to an election in this unit, it has 10 days from the issuance of this Decision to augment its showing of interest, if necessary. If the Petitioner fails to submit an adequate showing of interest within this period, the Petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>12</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Additionally, eligible are those employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and have been employed for a total of 45 working days within the 24 months immediately preceding the payroll period ending immediately preceding the date of this Decision, and also have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.<sup>13</sup> Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

### **SHEET METAL WORKERS' INTERNATIONAL**

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<sup>12</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

<sup>13</sup> See *Atlantic Industrial Constructors, Inc.*, 324 NLRB 355 (1997).

## ASSOCIATION, LOCAL 19

### LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **October 31, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **November 7, 2000**.

Signed: October 24, 2000

at Philadelphia, Pennsylvania

/s/ Dorothy L. Moore-Duncan  
**DOROTHY L. MOORE-DUNCAN**  
Regional Director, Region Four

440-3375-6200  
440-3375-6250

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